

ATTACHMENT 1

District Agreement No. 490

12-ORA-405 KP 18.0/18.5

CONSTRUCT TIEBACK WALL

AND MODIFY RAMPS

12208 – 0G5000

DISTRICT AGREEMENT NO. 490

COOPERATIVE AGREEMENT

This AGREEMENT entered into on _____, 2003 is between the STATE OF CALIFORNIA, acting by and through its Department of Transportation , referred to herein as “STATE”, and

THE CITY OF COSTA MESA

Referred to herein as a body and

a politic and a municipal corporation

of the State of California,

referred to herein as "CITY".

RECITALS

1. STATE and CITY, pursuant to Streets and Highways Code Section 130, are authorized to enter into a Cooperative Agreement for improvements to State highways within the City of COSTA MESA.
2. CITY desires State highway improvements consisting construction of a tieback wall and modification of two (2) on ramps at Harbor Boulevard on Route 405 in the City of Costa Mesa_, referred to herein as "PROJECT", and is willing to fund one hundred percent (100%) of all capital outlay and staffing costs, except for costs of STATE's quality assurance of environmental, design and right of way activities.
3. STATE's funds will not be used to finance any of the capital and support costs for PROJECT.
4. This Agreement supersedes any prior Memorandum of Understanding (MOU) relating to PROJECT.
5. Construction of PROJECT will be the subject of a separate future Agreement.
6. The parties hereto intend to define herein the terms and conditions under which PROJECT is to be developed, designed, and financed.

SECTION I

CITY AGREES:

1. To fund one hundred percent (100%) of all preliminary and design engineering costs, including, but not limited to, costs incurred for the preparation of contract documents, advertising for bids, and for awarding the construction contract for PROJECT.
2. To have a combined Project Study Report (PSR)/Project Report (PR) including all necessary environmental documentation (ED), and detailed Plans, Specifications, and Estimate (PS&E) prepared, at no cost to STATE, and to submit each to STATE for STATE's review and concurrence at appropriate stages of development. The PSR/PR and the final plans and specifications for PROJECT shall be signed by a Civil Engineer registered in the State of California.
3. To permit STATE to monitor and participate in the selection of personnel who will prepare the PSR/PR, conduct environmental studies and obtain approval for PROJECT, prepare the PS&E, and provide the right of way engineering services, and to permit STATE to oversee the performance of right of way activities. CITY agrees to consider any request by STATE to discontinue the services of any personnel considered by STATE to be unqualified on the basis of credentials, professional expertise, failure to perform in accordance with the scope of work and/or other pertinent criteria.
4. Personnel who prepare the PS&E and right of way maps shall be made available to STATE, at no cost to STATE, through completion of construction of PROJECT to

- discuss problems which may arise during construction and/or to make design revisions for contract change orders.
5. To not use funds from STATE for any capital and support costs for PROJECT.
 6. To make written application to STATE for necessary encroachment permits authorizing entry of CITY onto the State highway right of way to perform surveying and other investigative activities required for preparation of the PSR/PR, ED, and/or PS&E.
 7. To identify and locate all utility facilities within the area of PROJECT as part of the design responsibility for PROJECT. All utility facilities not relocated or removed in advance of construction shall be identified on the PS&E for PROJECT.
 8. To identify and locate all high and low risk underground facilities within the area of PROJECT and to protect or otherwise provide for such facilities, all in accordance with STATE's "Manual on High and Low Risk Underground Facilities Within Highway Rights of Way". City hereby acknowledges receipt of STATE's "Manual on High and Low Risk Underground Facilities Within Highway Rights of Way".
 9. If any existing public and/or private utility facilities conflict with the construction of PROJECT or violate STATE's encroachment policy, City shall make all necessary arrangements with the owners of such facilities for their protection, relocation, or removal in accordance with STATE's policy and procedure for those facilities located within the limits of work included in the improvement to the State highway and in accordance with CITY'S policy for those facilities which are or will be located

outside of the limits of the State highway. The total costs to PROJECT of such protection, relocation, or removal within the present or future State highway right of way shall be determined in accordance with STATE's policies and procedures.

10. To furnish evidence to STATE, in a form acceptable to STATE, that arrangements have been made for the protection, relocation, or removal of all conflicting facilities within the State highway right of way and that such work will be completed prior to the award of the contract to construct PROJECT or as covered in the PS&E for said contract. This evidence shall include a reference to all required State highway encroachment permits.
11. CITY shall require any utility owner and/or its contractor performing the protection or relocation work within the State highway right of way to obtain an encroachment permit from STATE prior to the performance of said work.
12. To acquire and furnish all right of way, if any, outside of the existing State highway right of way and to perform all right of way activities, including all eminent domain activities, if necessary, at no cost to STATE, and in accordance with procedures acceptable to STATE. These activities shall comply with all applicable State and Federal laws and regulations, subject to STATE's quality assurance to insure that the completed work is acceptable for incorporation into the State highway right of way.
13. To utilize the services of a qualified public agency or a qualified consultant, as determined by STATE's District Division Chief of Right of Way, in all matters

related to the acquisition of right of way in accordance with STATE's procedures as published in STATE's current Right of Way Manual. Whenever personnel other than personnel of a qualified public agency are utilized, administration of the personnel contract shall be performed by a qualified Right of Way person employed or retained by CITY.

14. To certify legal and physical control of right of way ready for construction and that all right of way parcels were acquired in accordance with applicable State and Federal laws and regulations, subject to review and concurrence by STATE prior to the advertisement for bids for the contract to construct PROJECT.
15. To deliver to STATE legal title to the right of way, including access rights, free and clear of all encumbrances detrimental to STATE's present and future uses not later than the date of acceptance by STATE of maintenance and operation of the highway facility. Acceptance of said title by STATE is subject to a review of a Policy of Title Insurance in the name of the State of California to be provided and paid for by CITY.
16. To be responsible, at CITY's expense, for the investigation of potential hazardous material sites within and outside of the existing State highway right of way that would impact PROJECT as part of the responsibility for the ED for PROJECT. If City encounters hazardous material or contamination within the existing State highway right of way during said investigation, City shall immediately notify STATE and responsible control agencies of such discovery.
17. If CITY desires to have STATE advertise, award, and administer the construction contract for PROJECT, CITY shall provide all plans prepared by CITY or CITY's

consultant on either 4 or 8 millimeter magnetic tape using Micro Station Release 5.0 .dgn files in UNIX TAR or CPIO format. One copy of the data on the magnetic tape, including the Engineer's electronic signature and seal, shall be provided to STATE upon completion of the final PS&E for PROJECT. STATE reserves the right to modify the magnetic tape requirements and STATE shall provide CITY advance notice of any such modifications. Reimbursement to STATE for costs incurred by STATE to advertise, award, and administer the construction contract for PROJECT will be covered in the separate Cooperative Agreement referred to in Article 12 of Section III of this Agreement.

18. To obtain, at CITY's expense, all necessary permits and/or agreements from appropriate regulatory agencies. All mitigation, monitoring, and/or remedial action required by said permits shall constitute parts of the cost of PROJECT.
19. All aerial photography and photogrammetric mapping shall conform to STATE's latest standards.
20. A copy of all original survey documents resulting from surveys performed for PROJECT, including original field notes, adjustment calculations, final results, and appropriate intermediate documents, shall be delivered to STATE and shall become property of STATE. For aerial mapping, survey documents to be furnished are three sets of contract prints, with one set showing control, a complete photo index - two prints and a copy of the negative, and the original aerial photography negative.
21. STATE's quality assurance activities referred to in Article I of Section II of this Agreement does not include performance of any engineering services required for

PROJECT. These services are to be performed by CITY. If CITY requests STATE to perform any of these services, CITY shall reimburse STATE for such services. An Amendment to this Agreement authorizing STATE's performance of such services will be required prior to performance of any engineering work by STATE.

SECTION II

STATE AGREES:

1. At no cost to CITY, to provide quality assurance activities of all work on PROJECT done by CITY, including, but not limited to, investigation of potential hazardous material sites and all right of way activities undertaken by CITY or its designee, to provide prompt reviews and approvals, as appropriate, of submittals by CITY, and to cooperate in timely processing of PROJECT.
2. Upon proper application by CITY, to issue, at no cost to CITY, an encroachment permit to CITY authorizing entry onto the State highway right of way to perform survey and other investigative activities required for preparation of the PSR/PR, ED, and/or PS&E. If CITY uses consultants rather than its own staff to perform required work, the consultants will also be required to obtain a separate encroachment permit. These permits will be issued at no cost upon proper application by the consultants.

SECTION III

IT IS MUTUALLY AGREED:

1. All obligations of STATE under the terms of this Agreement are subject to the appropriation of resources by the Legislature to STATE for the purposes of fulfilling STATE's obligations herein.
2. The parties hereto will carry out PROJECT in accordance with the Scope of Work, attached and made a part of the Agreement, which outlines the specific responsibilities of the parties hereto. The attached Scope of Work may be modified in writing in the future to reflect changes in the responsibilities of the respective parties. Such modifications shall be concurred with by CITY's Director of Public Works or other official designated by CITY and STATE's District Director for District 12 and become a part of this Agreement after execution of the amending document by the respective officials of the parties.
3. The basic design features (as defined in Attachment 3 of the Scope of Work for PROJECT) shall comply with those addressed in the approved PSR, unless modified as required for environmental clearance and/or FHWA approval of PROJECT.
4. The design, right of way acquisition, and preparation of environmental documents for PROJECT shall be performed in accordance with STATE's standards and practices current as of the date of performance. Any exceptions to applicable design standards shall first be approved by STATE via the processes outlined in STATE's Highway Design Manual and appropriate memorandums and design bulletins published by

STATE. In the event that STATE proposes and/or requires a change in design standards, implementation of new or revised design standards shall be done as part of the work on PROJECT in accordance with STATE's current Highway Design Manual Section 82.5, "Effective Date for Implementing Revisions to Design Standards". STATE shall consult with CITY in a timely manner regarding effect of proposed and/or required changes on PROJECT.

5. CITY's share of all changes in development and construction costs associated with modifications to the basic design features as described above shall be in the same proportion as described in this Agreement, unless mutually agreed to the contrary by STATE and CITY in a subsequent amendment to this Agreement.
6. Any hazardous material or contamination of an HM-1 category found within the existing State highway right of way during investigative studies requiring remedy or remedial action, as defined in Division 20, Chapter 6.8 et seq. of the Health and Safety Code, shall be the responsibility of STATE. Any hazardous material or contamination of an HM-1 category found within the local road right of way during investigative studies requiring the same defined remedy or remedial action shall be the responsibility of CITY. For the purpose of this Agreement, hazardous material or contamination of HM-1 category is defined as that level or type of contamination which State or Federal regulatory control agencies having jurisdiction have determined must be remediated by reason of its mere discovery, regardless of whether it is disturbed by PROJECT or not. If CITY decides to not proceed with PROJECT, STATE shall sign the HM-1 manifest and pay all costs for required remedy or remedial action within the existing State highway right of way and CITY shall sign the HM-1 manifest and pay all costs for required remedy or remedial

action within the local road right of way. If CITY and STATE decide to proceed with PROJECT, STATE shall sign the HM-1 manifest and pay all costs for required remedy or remedial action within the existing State highway right of way, except that if STATE determines, in its sole judgment that STATE's cost for remedy or remedial action is increased as a result of CITY's decision to proceed with PROJECT, that additional cost identified by STATE shall be deemed a part of the costs of PROJECT. CITY shall sign the HM-1 manifest and pay all costs for required remedy or remedial action within the local road right of way. STATE will exert every effort to fund the remedy or remedial action for which STATE is responsible. In the event STATE is unable to provide funding, CITY will have the option to either delay PROJECT until STATE is able to provide funding or CITY may proceed with the remedy or remedial action at CITY's expense without any subsequent reimbursement by STATE.

7. The remedy or remedial action with respect to any hazardous material or contamination of an HM-2 category found within the existing State highway right of way during investigative studies shall be the responsibility of CITY, at CITY's expense, if CITY decides to proceed with PROJECT. For the purposes of this Agreement, hazardous material or contamination of HM-2 category is defined as that level or type of contamination which said regulatory control agencies would have allowed to remain in place if undisturbed or otherwise protected in place should PROJECT not proceed. CITY shall sign any HM-2 storage manifest if PROJECT proceeds and HM-2 material must be removed in lieu of being treated in place. If CITY decides to not proceed with PROJECT, there will be no obligation to either CITY or STATE other than CITY's duty to cover and protect HM-2 material left in place.

8. If hazardous material or contamination of either HM-1 or HM-2 category is found on new right of way to be acquired by CITY for PROJECT, City, as between CITY and STATE only, shall be responsible, at CITY's expense, for all required remedy or remedial action and/or protection and shall guarantee STATE that said new right of way is clean prior to transfer of title to STATE in accordance with Article 15 of Section I of this Agreement. The generator of the hazardous material or, if none can be identified or found, the present property owner, whether a private entity or a local public agency, or CITY, as a last resort, shall sign the manifest.
9. Locations subject to remedy or remedial action and/or protection include utility relocation work required for PROJECT. Costs for remedy and remedial action and/or protection shall include, but not be limited to, the identification, treatment, protection, removal, packaging, transportation, storage, and disposal of such material.
10. The party responsible for funding any hazardous material cleanup shall be responsible for the development of the necessary remedy and/or remedial action plans and designs. Remedial actions proposed by CITY on the State highway right of way shall be pre-approved by State and shall be performed in accordance with STATE's standards and practices and those standards mandated by the Federal and State regulatory agencies.
11. A separate Cooperative Agreement will be required to cover responsibilities and funding for the construction phase of PROJECT.
12. Nothing in the provisions of this Agreement is intended to create duties or obligations to or tight is third parties not parties to this Agreement or to affect the legal liability of either party to the Agreement by imposing any standard of care with respect to the

development, design, construction, operation or maintenance of State highways and public facilities different from the standard of care imposed by law.

13. Neither STATE nor any officer or employee thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done by CITY under or in connection with any work, authority or jurisdiction delegated to CITY under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, CITY shall fully defend, indemnify and save harmless STATE and all its officers and employees from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined in Government Code Section 810.8) occurring by reason of anything done or omitted to be done by CITY under or in connection with any work, authority or jurisdiction delegated to CITY under this Agreement.

14. Neither CITY nor any officer or employee thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done by STATE under or in connection with any work, authority or jurisdiction delegated to STATE under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, STATE shall fully defend, indemnify and save harmless CITY and all its officers and employees from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined in Government Code Section 810.8) occurring by reason of anything done or omitted to be done by STATE under or in connection with any work, authority or jurisdiction delegated to STATE under this Agreement.

15. This Agreement may be terminated or provisions contained herein may be altered, changed, or amended by mutual consent of the parties hereto.
16. Except as otherwise provided in Article 13 above, this Agreement shall terminate upon completion and acceptance of the construction contract for PROJECT, or on 12/30/2008, whichever is earlier in time.

STATE OF CALIFORNIA

Department of Transportation

JEFF MORALES

Director of Transportation

By _____

Enrique Alonso

Deputy District Director

Project Delivery

CITY OF COSTA MESA

By _____

Mayor

Attest:

City Clerk

APPROVED AS TO FORM

City Attorney

APPROVED AS TO FORM AND PROCEDURE

Attorney

Department of Transportation

CERTIFIED AS TO FUNDS

District Budget Manager

CERTIFIED AS TO FINANCIAL TERMS AND CONDITIONS

HQ Accounting Administrator

SCOPE OF WORK

1. CITY will be the Lead Agency and STATE will be a Responsible Agency for CEQA. CITY will assess impacts of PROJECT on the environment and, if necessary, CITY will prepare the Environmental Document (ED) to meet the requirement of CEQA. CITY will provide all data for and prepare drafts of the combination Project Study Report and Project Report (PSR/PR). CITY will be responsible for the public hearing process.
2. CITY and STATE concur that the proposal is a Category ____ as defined in STATE's Project Development Procedures Manual.
3. CITY will submit drafts of environmental technical reports and individual sections of the draft environmental documents to STATE, as they are developed, for review and comment. Traffic counts and projections to be used in the various reports shall be supplied by STATE if available, or by CITY. Existing traffic data shall be furnished by CITY.
4. STATE will review, monitor, and approve all project development reports, studies, and plans, and provide all necessary implementation activities up to but not including advertising of PROJECT.
5. The existing freeway agreement need not be revised.

6. All phases of PROJECT, from inception through construction, whether done by City or STATE, will be developed in accordance with all policies, procedures, practices, and standards that STATE would normally follow.
7. Detailed steps in the project development process are attached to this Scope of Work. These Attachments are intended as a guide to STATE's and City's staff.

ATTACHMENT 1

PLANNING PHASE ACTIVITIES

PROJECT ACTIVITY	RESPONSIBILITY	
	STATE	LOCAL
		AGENCY
1 ENVIRONMENTAL ANALYSIS & DOCUMENT PREPARATION		
Establish Project Development Team (PDT)	X	X
Approve PDT	X	
Project Category Determination	X	
Prepare Preliminary Environmental Assessment		X
Identify Preliminary Alternatives and Costs		X
Prepare and Submit Environmental Studies and Reports		X
Review and Approve Environmental Studies and Reports	X	
Prepare and Submit Draft Environmental Document (DED)		X
Review DED in District	X	

2 PROJECT GEOMETRICS DEVELOPMENT

Prepare Existing Traffic Analysis		X
Prepare Future Traffic Volumes for Alternatives		X
Prepare Project Geometrics and Profiles		X
Prepare Layouts and Estimates for Alternatives		X
Prepare Operational Analysis for Alternatives		X
Review and Approve Project Geometrics and Operational Analysis	X	

3 PROJECT APPROVAL

Lead Agency for Environment Compliance Certifies ED in Accordance with its Procedures	X	X
Prepare Draft Project Report (DPR)		X
Finalize and Submit Project Report with Certified ED for Approval		X
Approve Project Report	X	

ATTACHMENT 2

DESIGN PHASE ACTIVITIES

PROJECT ACTIVITY	RESPONSIBILITY	
	STATE	LOCAL
		AGENCY
1 PRELIMINARY COORDINATION		
Request 1 - Phase EA	X	
Field Review of Site	X	X
Provide Geometrics		X
Approve Geometrics	X	
Obtain Surveys & Aerial Mapping		X
Obtain Copies of Assessor Maps and Other R/W Maps		X
Obtain Copies of As-Builts		X
Send Approved Geometrics to Local Agencies for Review	X	
Revise Approved Geometrics if Required		X
Approve Final Geometrics	X	
Determine Need for Permits from Other Agencies	X	X

Request Permits		X
Initial Hydraulics Discussion with District Staff		X
Initial Electrical Design Discussion with District Staff		X
Initial Traffic & Signing Discussion with District Staff		X
Initial Landscape Design Discussion with District Staff		X
Plan Sheet Format Discussion	X	X

2 ENGINEERING STUDIES AND REPORTS

Prepare & Submit Materials Report & Typical Section		X
Review and Approve Materials Report & Typical Section	X	
Prepare & Submit Landscaping Recommendation		X
Review & Approve Landscaping Recommendation	X	
Prepare & Submit Hydraulic Design Studies		X
Review & Approve Hydraulic Design Studies	X	
Prepare & Submit Bridge General Plan & Structure Type Selection		X
Review & Approve Bridge General Plan & Structure Type Selection	X	

PROJECT ACTIVITY	RESPONSIBILITY	
	STATE	LOCAL
		AGENCY
3 R/W ACQUISITION & UTILITIES		
(Used when <u>qualified</u> Local Agency is performing R/W activities.)		
Request Utility Verification		X
Request Preliminary Utility Relocation Plans from Utilities		X
Prepare R/W Requirements		X
Prepare R/W and Utility Relocation Cost Estimates		X
Submit R/W Requirements & Utility Relocation Plans for Review		X
Review and Comment on R/W Requirements	X	
Longitudinal Encroachment Review	X	
Longitudinal Encroachment Application to District		X
Approve Longitudinal Encroachment Application	X	
Request Final Utility Relocation Plans		X

Check Utility Relocation Plans		X
Submit Utility Relocation Plans for Approval		X
Approve Utility Relocation Plans	X	
Submit Final R/W Requirements for Review & Approval		X
Fence and Excess Land Review	X	
R/W Layout Review	X	
Approve R/W Requirements	X	
Obtain Title Reports		X
Complete Appraisals		X
Review and Approve Appraisals for Setting Just Compensation		X
Prepare Acquisition Documents		X
Acquire R/W		X
Open escrows and Make Payments		X
Obtain Resolution of Necessity		X
Perform Eminent Domain Proceedings		X
Provide Displacee Relocation Services		X
Prepare Relocation Payment Valuations		X
Provide Displacee Relocation Payments		X
Perform Property Management Activities		X
Perform R/W Clearance Activities		X

Prepare and Submit Certification of R/W		X
Review and Approve Certification of R/W	X	
Transfer R/W to STATE		X
Approve & Record Title Transfer Documents	X	
Prepare R/W Record Maps		X

RESPONSIBILITY

STATE LOCAL
AGENCY

PROJECT ACTIVITY

4 PREPARATION OF PLANS, SPECIFICATIONS AND

. ESTIMATES

Prepare and Submit Preliminary Stage Construction Plans		X
Review Preliminary Stage Construction Plans	X	
Calculate and Plot Geometrics		X
Cross-Sections & Earthwork Quantities Calculation		X
Prepare and Submit BEES Estimate		X
Put Estimate in BEES	X	
Local Review of Preliminary Drainage Plans and Sanitary Sewer and Adjustment Details		X
Prepare & Submit Preliminary Drainage Plans		X
Review Preliminary Drainage Plans	X	
Prepare Traffic Striping and Roadside Delineation Plans & Submit for Review		X

Review Traffic Striping and Roadside Delineation Plans	X	
Prepare & Submit Landscaping and/or Erosion Control Plans		X
Review Landscaping and/or Erosion Control Plans	X	
Prepare & Submit Preliminary Electrical Plans		X
Review Preliminary Electrical Plans	X	
Prepare & Submit Preliminary Signing Plans		X
Review Preliminary Signing Plans	X	
Quantity Calculations		X
Safety Review	X	X
Prepare Specifications		X
Prepare & Submit Checked Structure Plans		X
Review & Approve Checked Structure Plans	X	
Prepare Final Contract Plans		X
Prepare Lane Closure Requirements		X
Review and Approve Lane Closure Requirements	X	
Prepare & Submit Striping Plan		X
Review & Approve Striping Plan	X	
Prepare Final Estimate		X
Prepare & Submit Draft PS&E		X
Review Draft PS&E	X	
Finalize & Submit PS&E to District		X

ATTACHMENT 3

DEFINITIONS

Basic Design Features:

- The design speed on Interstate 405 is 125kph and design speed on Harbor Boulevard is 55 kph.
- The segment of I-405 operates as five (5) through lanes, one (1) auxiliary lane, and one (1) HOV lane, in each direction. Harbor Boulevard has four (4) lanes in each direction.
- I-405 HOV lane is 3.6 meters plus 4.3 meter buffer lane, the inside shoulder is 3 meters, through lanes are 3.6 meters and the outside shoulders is 3 meters. Harbor Boulevard is 29 meters wide; the through lanes are 3.6 meters and the median is 4 meters. There are no shoulders.